

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

## I. INTRODUCTION

1     **II.    BACKGROUND**

2         **A.    The Accident**

3           Plaintiffs allege that the 1998 Jeep Cherokee ("the  
4 Cherokee") in which they were traveling lost control and rolled  
5 over on a road in Idaho on May 25, 2005. See Notice of Removal,  
6 Docket No. 1, Ex. B ("Complaint") ¶ 8. Plaintiffs allege that  
7 certain components of the Cherokee, including the roof, roof  
8 supports, and restraints, failed during this accident as a result  
9 of flaws in their design and manufacture. Id. ¶¶ 10, 11, 17, 18.  
10 This failure allegedly resulted in severe and catastrophic  
11 injuries to Plaintiffs. See, e.g., id. ¶¶ 12, 19. Plaintiffs  
12 brought this suit against DaimlerChrysler AG, DaimlerChrysler  
13 Motors Company LLC, and DaimlerChrysler Corporation, alleging  
14 causes of action for negligence, strict liability, and breach of  
15 warranty. See id. Plaintiffs filed the suit in the Contra Costa  
16 County Superior Court on May 9, 2007, and Defendants removed it to  
17 this Court on June 20, 2007. See Notice of Removal; Compl.

18         **B.    Defendants' Corporate History and Structure**

19           Chrysler Corporation was incorporated in Delaware in 1986,  
20 and was responsible for the design, development, and assembly of  
21 Chrysler, Dodge, and Jeep vehicles.<sup>2</sup> Chrysler Corporation had its  
22 principal place of business in Michigan.

23           Chrysler Motors Corporation was incorporated in Delaware in  
24 1998, and was responsible for the sale of Chrysler, Dodge, and  
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26           <sup>2</sup>The details of the Defendants' corporate history and  
27 structure are taken from the Declaration of Louann Van Der Wiele  
28 and the Declaration of Paul Hecht. Docket Nos. 26, 12.

1 Jeep vehicles to authorized dealers. Chrysler Motors Corporation  
2 was a wholly owned subsidiary of Chrysler Corporation.

3 DaimlerChrysler AG was incorporated under the laws of the  
4 Federal Republic of Germany in May 1998, and has its principal  
5 place of business in Stuttgart, Germany.<sup>3</sup> DaimlerChrysler AG  
6 designed and manufactured Mercedes-Benz vehicles in Germany.

7 In May of 1998, Chrysler Corporation entered into a Business  
8 Combination Agreement ("BCA") with Daimler-Benz AG and  
9 DaimlerChrysler AG, which became effective on November 12, 1998.  
10 Pursuant to the BCA, Daimler-Benz AG merged into DaimlerChrysler  
11 AG, and Chrysler Corporation became a wholly owned subsidiary of  
12 DaimlerChrysler AG.

13 In November 1998, upon execution of the BCA, Chrysler  
14 Corporation renamed itself DaimlerChrysler Corporation, and  
15 Chrysler Motors Corporation renamed itself DaimlerChrysler Motors  
16 Corporation.

17 In January 2000, DaimlerChrysler Corporation became a wholly  
18 owned subsidiary of DaimlerChrysler North America Holding  
19 Corporation, which was itself a wholly owned subsidiary of  
20 DaimlerChrysler AG.

21 In 2001, DaimlerChrysler Motors Company LLC ("DC Motors") was  
22 formed in Delaware. In January 2002, DaimlerChrysler Motors  
23 Corporation merged into DC Motors. At this point, DC Motors  
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25 <sup>3</sup>"AG" is the standard abbreviation for "Aktiengesellschaft,"  
26 which is a German stock company, comparable to a shareholder-owned  
27 company in the United States. The details of this designation, and  
28 the differences between an AG and an American corporation, if any,  
are not material to this order.

1 assumed the responsibility for sales and distribution of Chrysler,  
2 Dodge, and Jeep vehicles to authorized dealers. At the same time,  
3 DC Motors became a wholly owned subsidiary of DaimlerChrysler  
4 North America Holding Corporation, and DaimlerChrysler Corporation  
5 became a wholly owned subsidiary of DC Motors.

6 DaimlerChrysler Corporation was responsible for making recall  
7 decisions affecting Chrysler, Dodge, and Jeep vehicles.

8 In March of 2007, the relationship between the German and  
9 American automakers ended and DaimlerChrysler AG sold the majority  
10 of its interest in DaimlerChrysler Corporation. DaimlerChrysler  
11 Corporation was converted to a Delaware limited liability company  
12 and renamed DaimlerChrysler Company LLC. Two months later, DC  
13 Motors became a wholly owned subsidiary of DaimlerChrysler Company  
14 LLC. In July 2007, DaimlerChrysler Company LLC was renamed  
15 Chrysler Motors LLC. Chrysler Motors LLC is a wholly owned  
16 subsidiary of Chrysler Holding LLC, in which DaimlerChrysler AG  
17 retained a 19.9% interest. The remainder was held by a private  
18 investment firm.

19 In October 2007, DaimlerChrysler AG renamed itself Daimler  
20 AG, the "Daimler" entity that brought the instant motion.

21 Daimler did not design, manufacture, or sell the Cherokee.  
22 Daimler does not conduct any business or maintain any offices in  
23 California. Daimler has not appointed an agent for service of  
24 process in California. Although Daimler currently manufactures  
25 Mercedes-Benz automobiles in Germany, it does not sell them  
26 anywhere in the United States, nor has it done so at any time  
27 relevant to this suit. Mercedes-Benz USA LLC, a Delaware limited  
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liability company with its principal place of business in New Jersey, has the rights to import, advertise, and distribute Mercedes-Benz vehicles and parts within the United States, but it purchases the vehicles and attains title to them in Germany.

### III. LEGAL STANDARD

"When a defendant challenges the sufficiency of personal jurisdiction, the plaintiff bears the burden of establishing personal jurisdiction over the defendant." Sinatra v. Nat'l Enquirer, Inc., 854 F.2d 1191, 1194 (9th Cir. 1988). "Where, as here, the motion is based on written materials rather than an evidentiary hearing, the plaintiff need only make a prima facie showing of jurisdictional facts. In such cases, we only inquire into whether [the plaintiff's] pleadings and affidavits make a prima facie showing of personal jurisdiction." Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 800 (9th Cir. 2004).

Because there is no federal statute governing personal jurisdiction in this matter, the Court applies California law. See id. (citing Fed. R. Civ. P. 4(k)(1)(A); Panavision Int'l, L.P. v. Toeppen, 141 F.3d 1316, 1320 (9th Cir. 1998)). "California's long-arm statute permits a court to exercise personal jurisdiction over a defendant to the extent permitted by the Due Process Clause of the Constitution." Panavision, 141 F.3d at 1320 (citing Cal. Code Civ. P. § 410.10). "For a court to exercise personal jurisdiction over a nonresident defendant, that defendant must have at least 'minimum contacts' with the relevant forum such that the exercise of jurisdiction 'does not offend traditional notions

1 of fair play and substantial justice.'" Schwarzenegger, 374 F.3d  
2 at 801 (quoting Int'l Shoe Co. v. Wash., 326 U.S. 310, 316  
3 (1945)).

4 Personal jurisdiction may be either general or specific.  
5 Panavision, 141 F.3d at 1320. "General jurisdiction exists when a  
6 defendant is domiciled in the forum state or his activities there  
7 are 'substantial' or 'continuous and systematic.'" Id. (quoting  
8 Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408,  
9 414-16 (1984)). The Ninth Circuit uses a three-part test to  
10 determine whether there is specific jurisdiction:

11 (1) The non-resident defendant must  
12 purposefully direct his activities or  
13 consummate some transaction with the forum or  
14 resident thereof; or perform some act by which  
15 he purposefully avails himself of the  
16 privilege of conducting activities in the  
17 forum, thereby invoking the benefits and  
18 protections of its laws;

19 (2) the claim must be one which arises out of  
20 or relates to the defendant's forum-related  
21 activities; and

22 (3) the exercise of jurisdiction must comport  
23 with fair play and substantial justice, i.e.  
24 it must be reasonable.

25 Yahoo!, Inc. v. La Lique Contre Le Racisme, 433 F.3d 1199, 1205-06  
26 (9th Cir. 2006).

#### 27 **IV. DISCUSSION**

28 There is no basis for the Court to exercise jurisdiction over  
Daimler in this matter. In opposing the Motion, Plaintiffs do not  
even suggest that general jurisdiction exists. See Opp'n at 5-6.  
Rather, Plaintiffs' sole contention is that the Court has personal

jurisdiction over Daimler because it has jurisdiction over DC Motors and DaimlerChrysler Corporation, which Plaintiffs claim were Daimler's agents. See id. "In determining the sufficiency of a defendant's contacts, it is not only defendant's activities in the forum, but also actions relevant to the transaction by an agent on defendant's behalf, which support personal jurisdiction." Theo H. Davies & Co v. Republic of the Marshall Islands, 174 F.3d 969, 974 (9th Cir. 1999).

The agency test is satisfied by a showing that the subsidiary functions as the parent corporation's representative in that it performs services that are sufficiently important to the foreign corporation that if it did not have a representative to perform them, the corporation's own officials would undertake to perform substantially similar services.

Doe v. Unocal Corp., 248 F.3d 915, 928 (9th Cir. 2001) (internal quotation marks omitted).

Plaintiffs argue that "DaimlerChrysler Corporation and [DC Motors] were engaged in activities that, but for their existence, [Daimler] would have had to undertake itself." Opp'n at 5. Plaintiffs offer no declarations, affidavits, or other evidence for this assertion. The only basis they provide for the agency argument is Tracinda Corp. v. DaimlerChrysler AG, 364 F. Supp. 2d 362 (D. Del. 2005). Plaintiffs' reliance on Tracinda is misplaced for a number of reasons. First, while Judge Farnan's opinion in that case is extraordinarily thorough in its discussion of the BCA and the corporate structure of DaimlerChrysler following the merger, it is based on a well-developed factual record that is not before this Court. The Court cannot simply adopt those findings

1 en masse.

2 Second, even if the Court did adopt those findings, they  
3 would be inadequate to support Plaintiffs' agency claim here.  
4 Tracinda was a securities fraud suit, arising out of pre-merger  
5 statements made by executives from Chrysler Corporation and  
6 Daimler-Benz AG that the combination was to be a "merger of  
7 equals." See id. at 378-80.<sup>4</sup> The plaintiffs there were investors  
8 who claimed that despite these statements, it was more accurately  
9 an acquisition, with Daimler retaining managing control of the  
10 entire corporate entity. Even if the Court accepts that Chrysler  
11 Corporation (subsequently DaimlerChrysler Corporation, now  
12 effectively Chrysler LLC) was fully absorbed into Daimler, and  
13 assumes, without evidentiary support, that the companies did not  
14 observe the corporate formalities necessary to protect Daimler in  
15 a case such as this, the Tracinda order does not address the roles  
16 of the various subsidiaries at issue here. There is no mention of  
17 Chrysler Motors Corporation, DaimlerChrysler Motors Corporation,  
18 DaimlerChrysler North America Holding Corporation, or DC Motors.  
19 Nothing in Tracinda can shed any light on the issue here, which is  
20 whether Daimler AG, or its predecessor DaimlerChrysler AG, can be  
21 held accountable for the decision not to recall the Cherokee.

22 Finally, even if the findings in Tracinda did support  
23 Plaintiffs' claim that DC Motors was Daimler's agent, it would not  
24 preclude the Court from considering the affidavits Daimler offers

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26 <sup>4</sup>The Court provides only the most cursory summary of the  
27 Tracinda facts and holdings. However, the Court has thoroughly  
28 reviewed that case and is firm in the conclusion that the holdings  
there have no bearing in this matter.



1 in this matter. Jurisdiction was not an issue in that case  
2 because the suit arose out of transactions that took place in  
3 Delaware, the defendants conducted business in Delaware, and the  
4 shareholder agreement in question contained a forum selection  
5 clause under which the parties had submitted to the jurisdiction  
6 of the Delaware courts. Id. at 365. As such, the various Daimler  
7 entities involved in that suit had no reason to present evidence  
8 that might acquit them of the court's jurisdiction. None of the  
9 foregoing is true here. Daimler does not do business in  
10 California and has not submitted to the Court's jurisdiction. It  
11 is therefore entitled to present evidence contesting jurisdiction  
12 without concern that the unrelated holding in Tracinda will  
13 preclude that argument.

14 The evidence Daimler presented supports its argument that DC  
15 Motors and DaimlerChrysler Corporation were not Daimler's agents.  
16 DC Motors and its predecessor, Chrysler Motors Corporation, were  
17 responsible for sales of Jeep vehicles, such as the Cherokee, to  
18 authorized dealers. Van Der Wiele Decl. ¶¶ 5, 8, 11.  
19 DaimlerChrysler Corporation and its predecessor, Chrysler  
20 Corporation, were responsible for the design, development, and  
21 manufacture of the Cherokee, as well as for decisions regarding  
22 recalls to Jeep vehicles. Id. ¶¶ 4, 8, 13. These are not tasks  
23 which, but for the existence of these subsidiaries, Daimler would  
24 have had to do itself. See Doe, 248 F.3d at 928. Daimler designs  
25 and manufactures Mercedes-Benz automobiles in Germany. It existed  
26 (as Daimler-Benz AG) prior to entering the BCA without needing a  
27 presence in California for the design, development, manufacture,  
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1 sales, or recall of Jeep vehicles. Since divesting its majority  
2 interest in DaimlerChrysler Corporation, Daimler has not engaged a  
3 new subsidiary in those tasks or undertaken to perform those tasks  
4 on its own. In short, the design, development, manufacture,  
5 sales, and recall of Jeep vehicles are not tasks which are  
6 fundamental to Daimler's business. Therefore, the subsidiaries  
7 performing those tasks cannot be considered Daimler's agents for  
8 the purposes of establishing personal jurisdiction.

9 The available authority also supports this conclusion. Where  
10 the subsidiary maintains the "primary and exclusive responsibility  
11 for the distribution, marketing, and sale" of the vehicle, it is  
12 not an agent of the parent company for jurisdictional purposes.  
13 Kramer Motors, Inc. v. British Leyland, Ltd., 628 F.2d 1175, 1177  
14 (9th Cir. 1980). In Kramer Motors, the president of the U.S.  
15 subsidiary sat on the British parent company's board of directors,  
16 the British parent reviewed and approved general policy decisions  
17 of the U.S. subsidiary, and the parent had "general executive  
18 responsibility for the operation" of the subsidiary, but the court  
19 still found that the subsidiary was not an agent for the purposes  
20 of establishing jurisdiction. Id. The level of control  
21 Plaintiffs assert that Daimler had over DC Motors is comparable to  
22 that rejected in Kramer Motors. See Opp'n at 6.

23 Other plaintiffs who have attempted to bring Daimler or its  
24 predecessor into court by asserting agency jurisdiction have been  
25 unsuccessful for a number of reasons. Daimler's evidence that it  
26 has used alternate means of distributing its products was  
27 sufficient to defeat agency jurisdiction in one case. Bauman v.

1 DaimlerChrysler AG, No. C-04-00194 RMW, 2007 U.S. Dist. LEXIS  
2 13116, at \* 8-9 (N.D. Cal. Feb. 12, 2007); see Hecht Decl. ¶ 11  
3 (Daimler has a variety of distribution channels for the Mercedes-  
4 Benz products it manufactures). In another, the court found that  
5 there was no agency because there was no evidence that absent the  
6 subsidiary, Daimler would start manufacturing and selling the  
7 vehicles the subsidiary manufactured and sold. Cai v.  
8 DaimlerChrysler AG, 480 F. Supp. 2d 1245, 1252 (D. Or. 2007).  
9 Plaintiffs do not allege that Daimler has begun the manufacture  
10 and sale of Chrysler, Dodge, and Jeep vehicles in California since  
11 divesting its interest in Chrysler.

12 Finally, the Court agrees with Daimler that, even if  
13 Plaintiffs had adequately shown a basis for jurisdiction, it would  
14 be unreasonable to require Daimler to defend itself in a lawsuit  
15 in California. Daimler structured its business to avoid this sort  
16 of liability. Plaintiffs do not provide any evidence that  
17 Defendants failed to observe corporate formalities. Nor do they  
18 offer any authority suggesting that the corporate structure in  
19 question was improper. Daimler could reasonably expect that it  
20 would not have to appear in litigation in California. See, e.g.,  
21 World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)  
22 ("The Due Process Clause, by ensuring the orderly administration  
23 of the laws, gives a degree of predictability to the legal system  
24 that allows potential defendants to structure their primary  
25 conduct with some minimum assurance as to where that conduct will  
26 and will not render them liable to suit.") (internal quotation  
27 marks and citation omitted). Requiring Daimler to appear would be  
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1 unreasonable. That Daimler resides in another country, rather  
2 than merely in another forum within the United States, makes this  
3 conclusion even more compelling. See, e.g., Sinatra, 854 F.3d at  
4 1199 ("litigation against an alien defendant creates a higher  
5 jurisdictional barrier than litigation against a citizen from a  
6 sister state because important sovereignty concerns exist").

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8 **V. DISCOVERY**

9 Plaintiffs request that, if the Court finds they have not  
10 established a prima facie case for jurisdiction over Daimler, they  
11 be allowed to conduct limited discovery on jurisdictional issues.  
12 The Court has broad discretion in considering whether or not to  
13 allow jurisdictional discovery. See Butcher's Union Local No 498  
14 v. SDC Inv., Inc., 788 F.2d 535, 540 (9th Cir. 1986). The Court's  
15 conclusion regarding jurisdiction was not based on a failure to  
16 prove the facts alleged, but the failure to even allege the  
17 necessary facts. Discovery will not cure this. Further,  
18 Plaintiffs have not identified what discovery they would seek or  
19 how that discovery would assist in resolving the dispute over  
20 jurisdiction, particularly in light of the Van Der Wiele and Hecht  
21 Declarations. See Terracom v. Valley Nat'l Bank, 59 F.3d 555, 562  
22 (9th Cir. 1995). The Court therefore denies Plaintiffs' request  
23 for additional discovery.

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25 **VI. CONCLUSION**

26 For the reasons set forth above, the Court concludes that it  
27 does not have jurisdiction over Daimler, and therefore GRANTS

1 Daimler's Motion to Dismiss. The Court DENIES Plaintiffs' request  
2 for limited jurisdictional discovery.

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4 IT IS SO ORDERED.

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6 March 17, 2008

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8 UNITED STATES DISTRICT JUDGE  
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